



STATE OF MAINE
COMMISSION ON GOVERNMENTAL ETHICS
AND ELECTION PRACTICES
135 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0135

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April 11th, 2001

Minutes of the April 11th, 2001, meeting of the Commission on Governmental Ethics and Election Practices held in the Commission Hearing Room, 242 State Street, Augusta, Maine.

Present: Chairman: Peter B. Webster; Members: Hon. Michael Carpenter (telephonically), Hon. Virginia Constantine, Dr. Linda W. Cronkhite, and Hon. Harriet P. Henry; Executive Director William C. Hain, III; Counsel Phyllis Gardiner, Esq.; and Commission Assistant Diana True.

Chair Webster called the meeting to order at 9:03 a.m.

The Commission considered items on the published agenda as follows:

Agenda Item #4: Maine Clean Election Act

The Commission considered what action to take regarding the setting of Maine Clean Election Fund distributions for legislative candidates in year 2002 elections. Ms. Sarah Walton of the Maine League of Women Voters addressed the Commission regarding the results of a legislative work session on LD 1711, a pending bill to amend the Maine Clean Election Act. She also informed the Commission of the positions of the Maine League of Women Voters and the Maine Clean Election Coalition (of which the League is a member) in support of the Commission adopting new distribution amounts for the 2002 elections. Chair Webster, without Commission objection, directed Mr. Hain to distribute the proposed distributions to interested parties and to schedule consideration of the matter on the May agenda.

Agenda Item #5: Maine Clean Election Act Penalty Issue

The Maine Clean Election Act provides for the disbursement of matching funds to certified candidates based upon the greater of the amount received or spent, alone or in conjunction with independent expenditures, by an opposing non-participating candidate. To determine those distribution amounts, accelerated reporting requirements in § 1017, sub-§ 3-B, and implemented by Commission Rules, Ch. 1, § 7, provide for the filing of 101%, 21-Day, and 12-Day Accelerated Reports. The penalty for late filing of accelerated reports is provided in § 1020-A, sub-§ 4 as follows: “. . . a candidate who fails to file an accelerated campaign finance report . . . must be assessed a penalty at least equivalent to but no more than 3 times the amount by which the contributions received or expenditures obligated or made by the candidate, whichever is greater, exceed the applicable Maine Clean Election Fund disbursement amount, per day of violation.” (emphasis added). That requirement, when applied to specific situations identified by

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the Commission staff during routine report audits, yields results that may be disproportionate to the gravity of the offending amounts involved.

Chair Webster inquired whether Counsel Gardiner agreed with Mr. Hain's assessment that the penalty provision is mandatory and does not give the Commission any discretion other than the extent of the penalty between one and three times the unreported amount per day of violation. Counsel Gardiner agreed with the summary and suggested the possibility of constitutional issues being raised associated with imposing very large monetary penalties that are disproportionate to the gravity of the offense as punitive, similar to a Class E crime.

The question was raised regarding the retroactive effect of legislatively providing the Commission with discretion in assessing penalties under the provision. Ms. Constantine inquired about the historic basis of the mandatory language, but since the provision was adopted through the citizen initiated bill process, no legislative history was available.

Ms. Sarah Walton appeared on behalf of the Maine League of Women Voters and the Maine Clean Election Coalition and addressed the Commission regarding the concerns of those organizations about the importance of candidates filing timely reports and the potential for partisanship issues arising in the penalty assessment process. She distinguished the importance of removing discretion from the Commission in these cases from other Commission penalty cases because of the impact of the release of matching funds on MCEA candidates when their opponents fail to timely report. She stated the recommendation of the Maine League of Women Voters that the Commission deal with this situation similarly to how other agencies that have no penalty assessment discretion, i.e., to refer unpaid penalty cases to the Attorney General and let the Attorney General compromise the claim as a matter of the prosecutorial discretion of that office.

Mr. Rick Pelletier from the Speaker's Office suggested the Commission has the authority in other situations where matching funds would be used, i.e., express advocacy, political action committees, etc., and that assessing the mandatory minimum penalties against candidates in these situations would be inconsistent with the application of those other provisions. Mr. Pelletier suggested that the extent and magnitude of this issue was not well known to the Legislature and recommended that the Legislature be informed of it. Chair Webster directed Mr. Hain to inform the Legislature through the Commission's oversight Committee on Legal and Veterans' Affairs about the nature and extent of the issue.

Agenda Item #6A: Sumner A. Lymburner Correspondence

By letter dated March 20th, 2001, Mr. Hain responded to Mr. Lymburner's request dated February 10th, 2001, to have the dollar value of biased newspaper articles added to the reported funding levels of candidates in an attempt to drive elections toward honesty in funding and advertising dollars. Mr. Lymburner responded by letter dated March 25th, 2001. Mr. Lymburner appeared and explained to the Commission his concern about the unintended triggering of matching funds by media advertisements and the disparate treatment of opposing parties as a result of his understanding of the application of the matching funds provisions. Commission



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Members and Staff clarified some of Mr. Lymburner's basis misunderstandings about the applicable statutes. No further action was required.

Agenda Item #1: March Meeting Minutes

Judge Henry moved, Ms. Constantine seconded, and the Commission voted unanimously to accept the minutes of the March 14, 2001, meeting as presented.

Agenda Item #2A: Linda Bennett-Catlow

After summary of the pertinent facts, Ms. Constantine moved, Judge Henry seconded, and the Commission voted unanimously to assess a penalty of \$8.50 for the late 6-Day Pre-General Campaign Finance Report and a penalty of \$269.22 for the late 42-Day Post General Report, a total penalty of \$277.72, but to waive the \$8.50 penalty if Ms. Bennett-Catlow could show evidence of previously having paid that penalty.

Agenda Item #3A: Katherine B. Maselli, Lobbyist for Bristol-Meyers Squibb Company

After summary of the pertinent facts, Judge Henry moved, Ms. Constantine seconded, and the Commission voted unanimously to assess a \$50 penalty for the late October Monthly Lobbyist Disclosure Report and a penalty of \$200 for the late November Monthly report, a total penalty of \$250.

Agenda Item #3B: Joseph B. McGonigle, Lobbyist for Maine Aquaculture Association

Following summary of pertinent facts, Ms. Constantine moved, Judge Henry seconded, and the Commission voted unanimously to assess a \$600 penalty for the late filing of the Annual Lobbyist Disclosure Report.

Agenda Item #3C: Evangeline Hollander, Lobbyist for Youth Alternatives, Inc.

After considering the pertinent facts, Ms. Constantine moved, Judge Henry seconded, and Commission Members voted unanimously to assess a \$50 for the late filing of the February Monthly Lobbyist Disclosure Report.

Agenda Item # 6B: Edward J. Democracy Complaints

Mr. Hain informed the Commission of the receipt of copies of three (3) separate complaints filed by Mr. Democracy with the Portland City Clerk's Office regarding alleged political action committee registration and reporting violations by three (3) organizations. The complaints had not been forwarded to the Commission for enforcement action to date, so no Commission action was required.



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Agenda Item #8: Status of Legislation

Chair Webster and Mr. Hain reviewed for Members the status of bills pending before the Legal and Veterans' Affairs Committee that potentially impact the Commission.

Agenda Item #7: Executive Session

Judge Henry moved, Ms. Constantine seconded, and the Commission voted unanimously to go into executive session to receive a status report on pending litigation from Counsel Gardiner. Mr. Carpenter announced his departure from the meeting at 10:55 a.m. Judge Henry moved, Ms. Constantine seconded, and the Commission voted unanimously to go back into regular session. No action was taken in executive session that required the Commission's ratification in regular session.

There being no further business, on motion and unanimous vote, the Commission adjourned at 11:05 p.m.

Respectfully submitted,

William C. Hain, III
Executive Director